

ORG. No.: 10010100

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ORDINANCE NO. 51-654

AN ORDINANCE CREATING CHAPTER 2.06 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO NONDISCRIMINATION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS:

SECTION 1. Section 2.06.010 of the Code of the City of Wichita, is hereby created to read as follows:

“Policy Prohibiting Discrimination.

The practice or policy of discrimination against persons by reason of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law (“protected class”) is a matter of concern to the City, since such discrimination not only threatens the rights and privileges of the inhabitants of the City but also menaces the institutions and foundations of a free democratic state. It is hereby declared the policy of the City, in exercise of its police power for the protection of the public safety, health and general welfare, for the maintenance of business and good government, and for the promotion of the City’s trade and commerce, to eliminate and prevent discrimination or segregation based on a protected class. It is further declared to be the policy of the City to assure equal opportunity and encouragement for every person, regardless of their membership in a protected class, to secure and hold, without discrimination, employment in any field of work or labor for which

the person is otherwise properly qualified; to assure equal opportunity for all persons within this City to full and equal public accommodations and the full and equal use and enjoyment of the services, facilities, privileges and advantages of all governmental departments or agencies, and to assure equal opportunity for all persons within this City in housing, without distinction on account of membership in a protected class.”

SECTION 2. Section 2.06.020 of the Code of the City of Wichita, is hereby created to read as follows:

“Nondiscrimination in Contracting.

- (a) It is the policy of the City to promote the principles of equal opportunity in its contracting activities by assuring that those seeking to do business with the City will treat contractors, subcontractors, and employees equally and will not engage in discrimination against their contractors, subcontractors, or employees because of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law (“protected class”).
- (b) It is also the policy of the City to ensure that work performed on behalf of the City is done in a cost effective and high-quality manner. Employees who are treated fairly are more productive in their jobs and less likely to change jobs, thus helping to ensure that government contracts are both cost effective and completed in a professional manner.
- (c) All City contracts for goods or services shall include provisions prohibiting discrimination in employment and in the performance of contracts on the basis of age, color, disability, familial status, gender identity, genetic information, national

origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law (“protected class”). This prohibition shall extend to retaliation for opposition to any practices forbidden under this Section, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor. All contractors shall include a similar provision in all subcontracts.”

SECTION 3. Section 2.06.030 of the Code of the City of Wichita, is hereby created to read as follows:

“Definitions.

The definitions contained in the Kansas Act Against Discrimination, K.S.A. 44-1001 to 44-1044; the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 to 44-1121; and the Discrimination Against Military Personnel Act, K.S.A. 44-1125 to 44-1128, all as may be amended from time to time, shall apply to this Chapter unless specifically defined herein.

Aggrieved Individual means any individual who has a good faith belief that such individual has been injured by an Unlawful Discriminatory Practice as set forth herein.

Days mean calendar days. If a deadline falls on a day City Hall is not open (*e.g.* a weekend, a holiday recognized by the City or emergency closure) the deadline will be extended to the next day City Hall is open.

Employee means any individual who is employed by an Employer and receives a salary or wages from such Employer, but does not include any individual employed by such

individual's parents, spouse or child or in the domestic service of any individual. The term Employee does not include an independent contractor.

Employer means: (1) any individual or entity (*e.g.* corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, unincorporated organization) doing business within the City of Wichita which has four or more Employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, (2) the City, and (3) any City contractor. For purposes of this Chapter, the term does not include:

- (1) The United States or any department or agency thereof, a corporation wholly owned by the government of the United States or an Indian tribe; or
- (2) A Nonprofit Fraternal or Social Association/Corporation.

Gender Identity means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.

Hearing Officer means a Municipal Court Judge of the City.

Investigator means one or more individual(s) designated by the City Manager.

Nonprofit Fraternal or Social Association/Corporation means an association or corporation that meets all of the following requirements:

- (1) It is organized in good faith for social or fraternal purposes;
- (2) Membership entails the payment of bona fide initiation fees or regular dues;
- (3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or bylaws adopted by the membership;

- (4) Membership is limited and there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and
- (5) It is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

To the extent not otherwise included, the term also includes any bona fide membership club that is exempt from taxation under Title 26, Section 501(c) of the United States Code.

The term does not include a labor organization.

Place of Public Accommodation shall include every establishment within the City that is open to the general public and offers any product, service or facility. The term Place of Public Accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with one or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. The term Place of Public Accommodation shall not include any establishment operated by a Nonprofit Fraternal or Social Association/Corporation, or bona fide civic, political or religious organization which restricts its products, facilities and services to the members of such association/corporation or organization, their guests, or individuals who promote the principles for which the association/corporation or organization is established or maintained.

Religious Organization means a church, mosque, temple, synagogue, non-denominational ministry, interdenominational and ecumenical organization, mission

organization, faith-based charity, faith-based social agency, faith-based educational institution, or other entity principally devoted to religious practice, teaching or education.

Rent means to lease, to sublease, to let or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.

Respondent means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the City.

Sexual Orientation means an individual's actual or perceived (by the individual or another) emotional, romantic or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

Unlawful Discriminatory Practices means those practices prohibited by Section 2.06.050 of this Chapter."

SECTION 4. Section 2.06.040 of the Code of the City of Wichita, is hereby created to read as follows:

"Civil Rights Declared.

- (a) The right of an otherwise qualified person to be free from discrimination because of that person's age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation or military or veteran status is recognized as, and declared to be, a civil right. This right shall include, but not be limited to, all of the following:
 - (1) The right to obtain and hold employment and the benefits associated therewith without discrimination.

- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public accommodation without discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (4) The right to exercise any right granted under this Chapter without suffering coercion or retaliation.”

SECTION 5. Section 2.06.050 of the Code of the City of Wichita, is hereby created to read as follows:

“Unlawful Discriminatory Practices.

In order to protect specific individuals within the City from discrimination on the basis of their membership in a legally-protected class, it shall be a duty of each individual or entity doing business within the City to not commit the following Unlawful Discriminatory Practices:

- (a) Employment - It shall be an Unlawful Discriminatory Practice for an Employer to refuse to hire or employ, or to discharge from employment or to otherwise discriminate against an otherwise qualified Employee in compensation or in terms, conditions or privileges of employment, because of the Employee’s membership in a protected class. This Chapter ordinance shall not apply to a Religious Organization with respect to the employment of individuals performing work connected with the carrying on of the organization’s religious teaching, ministry, religious duties or practices, advancement of religion, or other religious activities.

Notwithstanding the foregoing, the following are not discriminatory practices prohibited by this ordinance:

- (1) A Religious Organization that employs an individual to perform work associated with the Religious Organization that insists employees adhere to the tenets of the Religious Organization as a condition of employment.

Commented [MJ1]: Technical correction

Commented [MJ2]: Amendment submitted by CM Cerullo

(2) Nothing in this ordinance shall require an employer to hire or retain unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

(b) Housing - It shall be an Unlawful Discriminatory Practice for an individual or entity to discriminate against any individual in the terms, conditions, or privileges of the sale or Rent of real property within the City including Rental Housing, or in the provision of services or facilities in connection therewith, because of an individual's membership in a protected class, or to discriminate against any individual in such individual's use or occupancy of Rental Housing within the City because of the membership in a protected class of individuals with whom such individual associates. For purposes of this subsection, "protected class" includes not only the protected classes listed in Section 1 of this ordinance, but also United States citizenship. This provision shall not apply to the Rent of real property containing dwelling units occupied or intended to be occupied by no more than four persons or families living independently of each other, if the owner actually maintains and occupies one of such dwelling units as the owner's residence. Additionally, nothing in this Chapter shall prohibit:

- (1) A Religious Organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a Religious Organization, from limiting the sale, rental or occupancy of real property or Rental Housing which it owns or operates for other than a commercial purpose to individuals of the same religion or individuals who promote the religious principles for which it is established or maintained, or from giving preference to such individuals.

Commented [MJ3]: This recommendation was made by the DICR Advisory Board.

- (2) A Nonprofit Fraternal or Social Association/Corporation, which as an incident to its primary purpose or purposes provides real property or Rental Housing which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such real property or Rental Housing to individuals who are members or individuals who promote the principles for which it is established or maintained, or from giving preference to such individuals.
- (c) Public Accommodation - It shall be an Unlawful Discriminatory Practice for the owner, operator, lessee, manager, agent or Employee of any Place of Public Accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages or accommodations to any individual because of their membership in a protected class. For purposes of this subsection, “protected class” includes not only the protected classes listed in Section 1 of this ordinance, but also United States citizenship. Nothing in this Chapter shall be interpreted to apply to a Religious Organization’s performance of a religious function, including but not limited to the:
- (1) Provision of goods, services, facilities, privileges, advantages or accommodations related to the solemnization or celebration of a marriage, or
- (2) Performance of its religious teachings, ministry, religious duties or practices, advancement of religion, or other religious activities.”

Commented [MJ4]: This recommendation was made by the DICR Advisory Board.

SECTION 6. Section 2.06.060 of the Code of the City of Wichita is hereby created to read as follows:

“Interpretation.

Nothing in this Chapter shall be construed to:

- (a) Prohibit an Employer from requiring an Employee, during the Employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law.
- (b) Require an Employer to hire unqualified individuals or to retain Employees when there is a legitimate non-discriminatory or non-retaliatory reason to hire another candidate or terminate employment, or prevent any adverse action against an Employee that would have been taken regardless of the Employee's membership in a protected class.
- (c) Prohibit an Employer from requiring all of its Employees, as a condition of employment, to utilize the Employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The fact that an Employer requires an Employee to utilize the Employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this Chapter. However, an Employee may simultaneously file a complaint with the City as provided in this Chapter, and completion of the Employer's procedures is not a prerequisite to filing a complaint with the City.

- (d) Require any person or entity subject to this Chapter to make changes requiring a building permit to any existing facility, except as otherwise required by law.
- (e) Prohibit an Employer or Place of Public Accommodation from posting signs for restrooms and dressing rooms based on gender.
- (f) Prohibit a Nonprofit Fraternal or Social Association/Corporation or Religious Organization from limiting membership as is calculated by the association/corporation or organization to promote the principles for which it is established or maintained.
- (g) Be construed or applied in a manner that violates any law or unlawfully infringes upon any rights under the First Amendment of the United States Constitution, Section 7 of the Kansas Constitution Bill of Rights, the Adoption Protection Act (K.S.A. 60-5322, and amendments thereto), or the Kansas Preservation of Religious Freedom Act (K.S.A. 60-5301 *et seq.*, and amendments thereto).
- (h) Make it lawful to retaliate against individuals for exercising their rights to oppose unlawful discrimination.”

SECTION 7. Section 2.06.070 of the Code of the City of Wichita is hereby created to read as follows:

“Enforcement.

- (a) An Aggrieved Individual may file a written complaint with the City Clerk that the individual has been, or is being, subjected to an alleged Unlawful Discriminatory Practice(s) as prohibited by this Chapter. The complaint may be filed personally or through an attorney (or if a minor, through the minor’s

parent, legal guardian or attorney) and shall be completed on a form provided by the City. The complaint form shall state the names and contact information of the Aggrieved Individual, the individual(s) and/or entity/entities alleged to have committed the Unlawful Discriminatory Practice(s), a description of the alleged unlawful conduct, and all other information as may be required by the form provided by the City. The complaint form shall only be considered complete if all information required by the City's form has been provided to the extent such information is reasonably available to the Aggrieved Individual.

- (b) The complaint form must be filed within ~~sixty one-hundred eighty (60 180)~~ days of the alleged Unlawful Discriminatory Practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event, it must be filed within ~~sixty one-hundred eighty (60 180)~~ days of the last act of discrimination.
- (c) The complaint may be referred to an ~~approved~~ mediator for non-binding mediation at the request of the parties. The mediator shall ~~either be a person agreed upon by the Aggrieved Individual and the Respondent or, if no such agreement can be reached within a reasonable time following the filing of the complaint, a person~~ be selected by the City Manager ~~and mediation costs will be paid by the City. will serve as the mediator.~~ Fees charged by the mediator shall be assessed equally to the Complainant and the Respondent, but may be waived by the City upon a showing of financial hardship, or assessed on a sliding scale based on each party's ability to pay.

Commented [MJ5]: This change in the filing deadline was recommended by the DICR Advisory Board.

Commented [MJ6]: This option (in green highlighting), for mediation costs to be paid by the City, is submitted by the City Manager's Office

Commented [MJ7]: Recommended by the DICR Advisory Board.

- (d) If mediation is not successfully completed within sixty (60) Days of the referral, or a party chooses not to pursue mediation, the complaint shall be referred to the Investigator.
- (e) Upon receipt of a completed complaint, the Investigator shall notify the Respondent(s) of the complaint, providing sufficient details related to the complaint so the Respondent(s) may respond. The Investigator shall give the Respondent(s) thirty (30) Days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The Investigator may, at the request of Respondent(s), extend the answer period an additional thirty (30) Days. If the Respondent accused of violating the provisions of this Chapter is the City, the City will engage an independent Investigator who shall not otherwise be an Employee, agent, or contractor of the City. If the Respondent is the City, nothing in this ordinance shall affect the employee grievance processes in contract or policy.
- (f) Following the conclusion of the answer period, the Investigator may initiate an investigation period, requesting that the Aggrieved Individual and/or Respondent(s) provide additional information, documentation, statements or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within a reasonable period of time following the submission of additional information, documentation, or testimony.
- (g) Upon conclusion of the investigation period, the Investigator shall forward all evidence and other information received during the investigation to the Law

Department. The Law Department will make a determination whether probable cause exists that: (i) the Respondent(s) committed an Unlawful Discriminatory Practice, and (ii) imposition of a penalty pursuant to this Chapter:

- (1) Would not constitute an unlawful burden of a person's right to exercise of religion pursuant to Section 7 of the Kansas Constitution Bill of Rights or the Kansas Preservation of Religious Freedom Act (K.S.A. 60-5301 *et seq.*, and amendments thereto), or an unlawful burden of a person's freedom of speech, expression, or association (as protected by the First Amendment of the United States Constitution or the Kansas Constitution); or
 - (2) If imposition of a penalty would constitute a burden, application of such burden to the person would be in furtherance of a compelling governmental interest and such application would be the least restrictive means of furthering that compelling governmental interest.
- (h) If the Law Department finds that probable cause does not exist, then the Law Department shall notify the Aggrieved Individual and the Respondent(s) within a reasonable period of time, and this notification shall be considered a final order and no further action shall be taken by the City.
- (i) If the Law Department finds probable cause does exist, the Law Department shall notify the Aggrieved Individual and Respondent(s) and request conciliation and settlement. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within sixty (60) Days of the date of the finding of probable cause (unless such time is extended by

the Law Department for good cause and with the agreement of all parties), the matter shall be referred to the Hearing Officer for review, who shall sit as an Administrative Judge for purposes of this Chapter.

- (j) Upon referral to the Hearing Officer, the Hearing Officer shall schedule a hearing on the complaint. The parties shall be given ten (10) Days' written notice via certified mail of the date, time, and place of the hearing. At such hearing, the parties and the Law Department shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the Hearing Officer, but the rules of evidence used in courts of law need not be strictly enforced.
- (j) Any determination of the Hearing Officer that the Respondent(s) committed an Unlawful Discriminatory Practice shall be issued in writing within sixty (60) Days of the hearing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements and facts of the determination. If the Hearing Officer finds that a civil violation of this Chapter has occurred, the Hearing Officer may impose a civil penalty upon the Respondent(s) in the amount of up to \$2,000 for each violation. Each party is to bear their own attorneys' fees, if any. **The prevailing party is free to pursue their reasonable and necessary costs and fees accrued during the case.** Any fines collected under this section shall be used to offset the costs of enforcement of this ordinance. The Hearing Officer is further authorized, in his or her discretion and in lieu of a civil penalty, to require reasonable educational requirements upon the

Commented [DS8]: Added at request of Councilman Cerullo

Respondent to address violations of this ordinance, by written order. Hearings shall be ~~made~~ recorded or transcribed by a court reporter, and transcripts of hearings shall be maintained by Municipal Court.

Commented [MJ9]: Technical correction

- (k) The filing of a complaint for the alleged violation of this Chapter or a response thereto shall in no way preclude any party from seeking other relief under state or federal law. Appeals from any final determination of the Hearing Officer shall be made pursuant to K.S.A. 60-2101(d) and its amendments.”

SECTION 8. Section 2.06.080 of the Code of the City of Wichita is hereby created to read as follows:

“Severability.

Should any section, subsection, sentence, clause or phrase of this Chapter, or the application thereof to any person or circumstance, be declared unconstitutional, invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this Chapter.”

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon publication once in the official paper. Complaints will be accepted beginning ~~September 1,~~ January 1, 2022, in order to allow time for implementation of enforcement processes.

Commented [MJ10]: Recommended by Vice Mayor Johnson

ADOPTED at Wichita, Kansas, ____ day of _____, 2021.

Brandon J. Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Jennifer Magaña
City Attorney and Director of Law